

REMARKS

Applicant thanks the Examiner for the Examiner's comments, which have greatly assisted Applicant in responding.

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Claims 1-25 are pending in the present application.

Claim Rejections Under 35 USC § 103

10 Claims 1-14 were rejected under 35 USC § 103 (a) as being unpatentable over U.S. Patent Number 6,502,194 to Berman (hereinafter "Berman") in view of U.S. Patent Application Number 2001/0030660 to Zainouline (hereinafter "Zainouline"). Applicant respectfully submits that Berman and Zainouline, taken alone or in combination, fail to teach, suggest, or render obvious the present invention as
15 claimed.

Independent Claims 1, 6, and 16 recite an apparatus, method, and/or program storage medium comprising, *inter alia*, a buffer within a second memory, which pre-caches consecutively downloaded small portions of songs forming a sequence of
20 songs to be played.

Looking at the cited references, Berman discloses a system for playback of network audio material on demand in response to user selection. Berman fails to teach or suggest a buffer within a second memory, which pre-caches consecutively
25 downloaded small portions of songs forming a sequence of songs to be played, as claimed in independent Claims 1, 6, and 16. At the paragraphs cited in the Office Action, especially at col. 12, lines 10-25, Berman teaches away from the present invention, specifically that data for other selected songs is downloaded into separate buffers in an alternating fashion, and that a buffer is not expected to have sufficient
30 capacity to contain the entire data needed for one song.

Zainoulline does not remedy any of the deficiencies of Berman. Zainoulline fails to teach or suggest a buffer within a second memory, which pre-caches consecutively downloaded small portions of songs forming a sequence of songs to be played, as claimed in independent Claims 1, 6, and 16. Furthermore, Berman fails to teach or suggest a combination with Zainoulline and Zainoulline fails to teach or suggest a combination with Berman. It would be impermissible hindsight based on Applicant's own disclosure to combine the teachings of the two references and to arrive at the present invention. Moreover, such an alleged combination would still fail to teach or suggest a buffer within a second memory, which pre-caches consecutively downloaded small portions of songs forming a sequence of songs to be played, as claimed in independent Claims 1, 6, and 16.

Thus, Applicant respectfully submits that independent Claims 1, 6, 16 are distinguishable over Berman and Zainoulline, taken alone or in combination, and should be allowed. Claims 2-5, 7-15, and 17-25, dependent directly or indirectly from independent Claims 1, 6, 16, respectively, are also distinguishable over Berman and Zainoulline, taken alone or in combination, and should also be allowed at least for the same reasons as stated above.

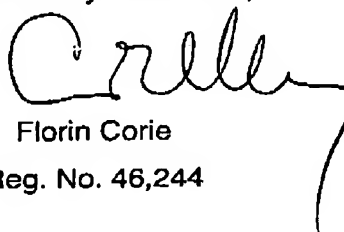
As a result, Applicant respectfully requests withdrawal of the rejections and allowance of the Claims.

CONCLUSION

Based on the foregoing, Applicant considers the claimed invention to be distinguished from the art of record. Accordingly, Applicant earnestly solicits the
5 Examiner's withdrawal of the rejections raised in the above referenced Office Action, such that a Notice of Allowance is forwarded to Applicant, and the present application is therefore allowed to issue as a United States Patent.

Respectfully Submitted,

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